DOCUMENT RESUME

ED 466 060 EC 309 027

AUTHOR	Ahearn, Eileen
TITLE	Due Process Hearings: 2001 Update. Quick Turn Around (QTA).
INSTITUTION	National Association of State Directors of Special Education, Alexandria, VA.
SPONS AGENCY	Special Education Programs (ED/OSERS), Washington, DC.
PUB DATE	2002-04-00
NOTE	8p.; For the 1999 update, see ED 436 880.
CONTRACT	H326F000001
AVAILABLE FROM	National Association of State Directors of Special Education, 1800 Diagonal Rd., Suite 320, Alexandria, VA 22314. For full text: http://www.nasdse.org/forum.htm.
PUB TYPE	Reports - Descriptive (141)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Compliance (Legal); *Conflict Resolution; *Disabilities; *Due Process; Educational Legislation; Elementary Secondary Education; Federal Legislation; *Hearings; State Norms

ABSTRACT

This brief report presents state data from 10 years (1991-2000) on the number of special education due process hearings requested and the number actually held. It notes requirements for designing and conducting due process hearings under both federal (Individuals with Disabilities Education Act) and state laws. It also finds that the major difference among states is the use of either a single- or a two-level structure. In the one-tier system, hearings are initiated at the state level with no formal hearing procedure at lower levels, whereas in the two-tier system, a hearing takes place first at the school or district level with the right of appeal to the state level. The report also notes that states vary in collection of calendar or school year data. Major findings indicate a continuation of the pattern of annual increases in the number of hearings requested at Level 1, although the total number of hearings held continued to decline. Results suggest the increasing use of alternate strategies for dispute resolution, especially mediation. Tables present the following data by state and year: (1) number of hearings requested at Level 1; (2) number of hearings held at Level 1; and (3) number of hearings held at Level 2 for two-tier states. (DB)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 466 060

Quick Turn Around

Project FORUM

QTA – A brief analysis of a critical issue in special education

Due Process Hearings: 2001 Update

April 2002

Eileen Ahearn, Ph.D.

Purpose and Method

Project FORUM at the National Association of State Directors of Special Education (NASDSE) has compiled a unique set of data presented in three previous reports on the incidence of due process hearings for the years 1991 to 1998.[1] Under its Cooperative Agreement #H326F000001 with the U. S. Department of Education Office of Special Education Programs (OSEP), Project FORUM surveyed all states in November 2001 to add to the eight years of due process information.

The information requested for the years 1999 and 2000 was the same as in previous years: the number of due process hearings *requested* and the number actually *held*. Respondents from two-tier states (see explanation below) were also asked to report those data for level two, i.e., hearings that were appealed to the state from a local level.

Responses were received from all 50 states and the District of Columbia. This document describes the data from the latest survey and provides a brief analysis of trends over time based on the data from all previous surveys. Tables containing all data on hearings requested and held for the 10-year period 1991 through 2000 are also appended.

Background: Laws and Regulations

Requirements for designing and conducting due process hearings in special education are prescribed at both federal and state levels. Federal law requirements are specified in the Individuals with Disabilities Education Act (IDEA)[20 U.S.C. Chapter 33], and the IDEA regulations [34 *CFR* 300]. Specific due process provisions of the IDEA regulations are in Subpart E-Procedural Safeguards, specifically in §300.507-514, and §300.528. Regulations implementing Section 504 of the Rehabilitation Act of 1973 also provide federal due process protections for persons with disabilities.

In addition to federal requirements, each state has passed laws, adopted regulations and, in many cases, developed guidelines and policies relating to due process procedures for students with disabilities.

Findings: Tiers

Due process systems are structured in similar ways across the country. However, there is one major difference among states—the use of a single or two level structure. States use either a:

[1] The three previous reports are as follows: *Due Process Hearings: 1999 Update* (1999); *Due Process Hearings: An Update* (1997); and, *Mediation and Due Process Procedures in Special Education: An Analysis of State Policies* (1994).

BEST COPY AVAILABLE

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

EC 309027

This document is available in alternative formats. For details, please contact Project FORUM staff at 703-519-380(

- *One-tier system* in which the hearing is initiated at the state level with no formal hearing procedure at lower levels, or a

- *Two-tier system* in which a hearing takes place first at a lower level, usually the school or district, with the right of appeal to a state-level hearing officer or panel.

Some two-tier states do not collect data from the local level concerning tier one hearings requested or held, so the level one data for those states is not available.

There are some minor differences in the implementation of these systems. Most often, the first tier hearing is at the district level, and the second tier is a review process at the state level. However, the first tier can be held at the state level with the second tier involving another non-court component such as a state administrative law division.

State staff who support the use of a two-tier system believe that it is more effective to work toward dispute settlement at a level closest to the differing parties. Also, a more informal approach is possible at a school or district level, lessening the involvement of state personnel who may be perceived as "outsiders" to the dispute.

However, the trend in recent years has been to move from a two-tier to a one-tier system, mainly because of the delay in dispute resolution caused by the multiple levels. Since 1991 nine states—Alaska, Georgia, Illinois, Maryland, Missouri, Rhode Island, Utah, Virginia and Wisconsin—have changed from a two-tier to a one-tier system, while no conversions have been made in the other direction. The changes are as follows:

Recent changes in structure:
AK changed to one tier in 2001.
UT changed to one tier in 6/2000.
VA changed to one tier 1/1/2001.
RI changed to one tier 12/2000.

Changes noted in previous reports:
GA changed to one tier on 2/14/94.
IL changed to one tier on 7/1/97.
MD changed to one tier on 7/1/96.
MO changed to one tier on 8/28/96.
WI changed to one tier on 6/26/96.

Table 1 contains data relating to the current status of tier structures in states.

Table 1: State Structures in 2001

Type	*States*
One-Tier **N=34**	AK, AL, AR, CA, CT, DC, DE, FL, GA, HI, ID, IL, IA, MD, MA, ME, MO, MS, MT, NE, NH, NJ, ND, OR, SD, TN, TX, UT, VA, VT, WA, WV, WI, WY
Two-Tier **N=17**	AZ, CO, IN, KS, KY, LA, MI, MN, NV, NM, NY, NC, OH, OK, PA, RI*, SC

*Note: RI became one tier at the end of 2000

Findings: Time Periods

Because states vary in the way they maintain their records, the spans covered for the years discussed in this report differ. For example, some states maintain their data on a calendar year basis, while others use different divisions such as fiscal years or school years. In addition, some states use different time periods for different types of data. The purpose of this analysis can be served by comparison of annual incidence, even though the specified "year" does not cover exactly the same span of months. The responses provided by states for the period corresponding to the years 1999 and 2000 are summarized in Table 2.

Table 2: State Record-Keeping Year

Year	*States*
Traditional Fiscal Year (N=30) 7/1/98-6/30/99 & 7/1/99-6/30/2000	AK, AZ, AR, CA, DC, DE, GA, HI, IA, KS, KY, LA, MD, MA, MN, MO, MS, NV, NJ, NM, NC, OH, OK, PA, SC, TX, UT, VA, WV, WY
Calendar Year (N=18) 1/1/98-12/31/99 & 1/1/99-12/31/2000	AL, CO, CT, FL, ID, IL, IN, ME, MI, MT, NE, NH, OR, RI, TN, VT, WA, WI
Federal Fiscal Year (N =1) 10/1/98-9/30/99 & 10/1/99-9/30/2000	NY
Other: (N =2) 9/1/98-8/31/99 & 9/1/99-8/31/2000	ND, SD

Findings: Hearings Statistics

Data were analyzed to examine changes for the 10-year period from 1991 through 2000, as well as for the most recent two-year period. Percentages were used for comparisons only in carefully selected instances because very small changes in a state with low numbers can produce large percentages that are misleading.

*Hearings **Requested** at Level One*[2]

For the most recent two years (1999-2000), the total number of hearing requests across the country increased, continuing the general pattern of annual increases established since 1991. However, more states reported decreases from the previous year, although the reductions for each year did not involve all the same states. In 1999, 18 state total requests were the same or lower than the previous year, while in 2000, 23 states reported the same or fewer requests than the previous year.

Table 3 contains all the data on hearing requests for the 10-year period. State change patterns in requests for specific states over the full period have been inconsistent—in some states, requests increased every year, some decreased every year, and others have a mixed record.

*Hearings **Held** at Level One*

In the most recent two years, the total number of hearings held across the country declined, continuing the trend set in the previous three years. About the same number of states reported fewer hearings held in each of these years, but the reductions happened in different states. Data for hearings held in the 10-year period are contained in Table 4.

Analysis and Discussion

Tables 3, 4, and 5 at the end of this document contain the data that were available for analysis. Changes in these data over one or two years might be due to changes in policy, but they can also result from unique events or even unrelated changes in a state. Therefore, it is really not appropriate to characterize short-term variations as significant. However, as discussed below, multi-year trends in national totals may indicate trends in the due process system.

Data on hearings can be viewed from the perspective of changes in the difference between the number of requests and the number of hearings held. The current survey revealed a continuation of the trend, first noted in the previous report, that a growing number of hearing requests do not reach the level of a formal hearing. The following comparison over five years illustrates this trend:

[2] Data for the number of hearings requested include all requests for both one tier and two tier states.

Year	Total Requests	Total Hearings	No Hearings	Percent Not Heard
1996	7,532	3,555	3,977	52.8%
1997	9,246	3,402	5,844	63.2%
1998	9,827	3,315	6,512	66.3%
1999	9,971	3,126	6,845	68.6%
2000	11,068	3,020	8,048	72.7%

Further analysis of the full 10 years of data reveals a steady and clear trend when the total number of hearings requested and the total number of hearings held are contrasted over the two five-year periods they cover. When the year-to-year changes are averaged within each five-year period, the following pattern emerges:

- From 1991 to 1995, the number of requests increased an average of 4.3% per year, and the number of hearings held also increased an average of 10.0% per year.

- From 1996 to 2000, the number of requests increased an average of 10.4% each year, but the number of hearings held *decreased* at the average rate of 4.0% per year.

These data reveal that requests for a hearing have continued to increase nationally each year over the ten-year period, and more rapidly in the recent five years. It is important to recognize that there are many complex factors that influence the holding of hearings or the cancellation of such requests. For example, parents and school personnel may work out their differences informally, families may move, or requests may be withdrawn for a number of other reasons. While we do not know why specific requests do not reach the level of a formal hearing, one probable contributing factor is growth in the use of alternate strategies for dispute resolution, especially mediation.

Concluding Remarks

The 1997 amendments to IDEA require that every state establish procedures that will allow, for the settlement of a dispute through mediation at state cost [34 CFR 300.506(a)], although many states offered mediation prior to that mandate. It can reasonably be expected that states will continue to improve their efforts to make mediation and other dispute resolution strategies available. If so, the decrease in the number of hearings held that is revealed in this report should continue.

Despite the long-standing due process requirements in federal law and regulations, there is no mandate for data collection on a national level. However, states have improved their capacity for information management, and each state now includes statistics on dispute resolution in the self-assessment that is a part of OSEP's Continuous Improvement Monitoring Process. Some states also provide such data to the public through their web sites. It is important that state data on dispute resolution continue to be compiled and analyzed on a national level because these data can be used as part of the evaluation of improvements in special education.

Table 3: Number of Hearings REQUESTED at Level One										
STATE	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**
AL	27	44	53	59	81	85	89	60	100	133
AK	4	2	0	nd	nd	nd	nd	nd	4	7
AZ	nd	nd	nd	17	24	36	nd	47	38	41
AR	nd	15	39	36	14	53	38	35	46	48
CA	611	772	849	1,004	1,170	1,555	1,700	1,816	2,105	2,556
CO	16	27	26	36	24	29	37	28	34	36
CT	227	195	278	358	382	306	328	358	317	294
DE	7	10	5	7	10	8	12	13	13	14
DC	576	588	624	nd	nd	1,160	1,730	1,984	1,250	1,499
FL	37	43	31	74	89	106	105	117	176	200
GA	28	48	57	60	69	76	90	88	89	100
HI	22	23	25	37	16	32	56	71	76	131
ID	8	2	6	8	6	6	8	18	14	8
IL	466	507	393	659	477	480	483	398	410	523
IN	82	59	62	68	70	68	67	71	63	54
IA	32	25	28	31	30	23	12	17	11	10
KS	nd	nd	31	61	53	158	106	101	78	101
KY	33	34	50	54	39	40	47	42	56	48
LA	6	7	20	34	32	41	57	42	30	35
ME	53	35	64	64	48	67	98	52	68	80
MD	26	40	50	52	29	nd	701	538	587	539
MA	379	343	458	580	581	632	558	603	620	671
MI	42	34	33	77	74	77	106	110	140	152
MN	4	19	16	29	33	43	48	44	42	47
MS	2	4	23	23	24	26	28	25	31	34
MO	nd	nd	nd	nd	nd	61	87	74	75	95
MT	6	4	10	9	8	12	15	5	10	7
NE	14	9	3	6	12	7	9	14	8	5
NV	14	31	28	52	48	46	63	72	73	65
NH	77	80	74	75	90	78	61	73	80	84
NJ	643	555	740	693	721	719	858	938	1,138	1,233
NM	2	5	9	11	13	23	13	18	18	16
NY	465	500	609	nd	nd	nd	nd	nd	nd	nd
NC	14	24	14	35	29	48	74	41	58	47
ND	2	4	3	3	7	4	2	5	6	5
OH	47	49	51	54	61	nd	nd	179	188	227
OK	99	83	19	20	36	29	34	40	40	25
OR	26	43	56	56	54	37	44	51	51	37
PA	264	256	213	286	332	454	549	722	857	970
RI	32	20	25	28	43	50	40	50	37	34
SC	1	5	3	2	2	nd	nd	nd	nd	Nd
SD	16	19	6	9	13	12	6	12	7	4
TN	40	58	56	76	77	93	73	69	78	71
TX	131	134	118	173	223	413	460	393	436	379
UT	7	8	5	3	5	1	2	2	19	7
VT	12	25	22	33	42	21	52	44	53	47
VA	nd	63	66	102	120	96	84	104	114	113
WA	nd	nd	nd	72	92	105	115	149	135	143
WV	29	34	28	45	36	38	42	28	24	24
WI	24	23	25	44	52	75	49	64	57	63
WY	2	3	1	5	6	3	10	2	11	6
TOTAL	4,655	4,911	5,405	5,321	5,497	7,532	9,246	9,827	9,971	11,068

nd = no data provided

This table represents the number of requests for hearings for all states at the first level. For some two-tier states, these data are not available because they exist only at the local level and are not collected by the state.

Table 4: Number of Hearings HELD at Level One										
STATE	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**
AL	10	10	19	10	11	17	24	8	14	14
AK	4	2	0	1	2	nd	nd	nd	1	1
AZ	7	5	7	3	6	5	5	10	10	7
AR	6	2	13	13	5	14	8	6	13	11
CA	74	72	58	50	77	88	145	114	153	197
CO	4	3	2	5	4	7	7	2	4	6
CT	51	56	77	96	114	25	32	34	43	26
DE	2	4	3	2	5	1	2	4	8	7
DC	342	334	363	nd	nd	760	447	498	357	419
FL	12	12	17	19	17	26	25	29	42	20
GA	10	9	24	23	15	11	17	15	9	12
HI	6	7	6	3	4	8	10	8	19	41
ID	1	1	2	2	1	1	2	8	3	3
IL	130	133	105	125	87	120	58	55	49	70
IN	32	19	17	33	22	18	16	19	17	11
IA	6	5	5	5	6	4	2	2	3	4
KS	8	4	11	10	9	46	45	22	19	14
KY	7	8	9	13	17	12	14	10	6	13
LA	3	3	7	9	7	11	11	12	9	10
ME	22	10	23	19	8	12	33	10	18	17
MD	16	19	46	nd	nd	nd	125	127	136	125
MA	95	111	89	40	32	36	50	36	27	33
MI	14	14	19	22	7	19	16	18	17	24
MN	4	0	3	11	7	17	16	9	8	16
MS	2	4	10	8	5	5	10	6	6	3
MO	5	5	7	6	10	4	23	12	12	22
MT	1	2	3	2	2	3	3	1	1	2
NE	7	3	1	2	2	4	2	4	3	4
NV	2	6	5	2	3	5	9	15	10	9
NH	20	16	15	14	11	14	10	7	9	13
NJ	nd	nd	176	266	275	256	306	344	334	309
NM	0	0	1	2	2	3	4	2	5	3
NY	465	500	609	793	1,136	1,600	1,401	1,344	1,234	1,052
NC	2	3	2	9	4	20	43	13	2	2
ND	0	2	0	2	5	3	0	2	2	0
OH	12	12	10	9	11	11	36	17	22	34
OK	33	16	5	7	19	8	7	12	3	8
OR	5	5	7	9	5	4	5	8	8	8
PA	112	106	78	82	112	147	201	251	245	209
RI	6	2	4	28	43	50	40	50	34	34
SC	1	5	3	2	2	nd	nd	Nd	12	14
SD	3	6	1	6	8	1	4	3	1	2
TN	nd	19	12	22	14	39	30	26	48	45
TX	nd	nd	nd	35	33	51	80	67	71	66
UT	1	1	0	1	1	1	1	2	3	3
VT	1	9	7	5	4	0	8	12	6	4
VA	nd	25	39	33	45	26	27	23	16	25
WA	19	64	72	47	25	19	16	23	19	26
WV	4	5	8	11	12	13	12	3	11	6
WI	5	8	9	2	8	9	11	11	22	14
WY	2	3	1	2	3	1	3	1	2	2
TOTAL	1,574	1,670	2,010	1,921	2,263	3,555	3,402	3,315	3,126	3,020

nd = no data provided

Table 5: Number of Hearings HELD at *LEVEL TWO* for Two-Tier States										
STATE	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**
AK	2	2	nd	1	2	1	0	0	0	0
AZ	0	8	3	2	2	4	5	9	5	2
CO	1	1	2	nd	nd	1	1	2	3	2
GA	6	9	4	8	NA	NA	NA	NA	NA	NA
IL	60	54	49	38	31	35	NA	NA	NA	NA
IN	14	8	12	15	10	7	9	7	9	5
KS	2	2	3	6	3	4	6	4	8	6
KY	3	5	4	8	10	5	13	6	3	8
LA	3	3	3	7	1	7	4	9	6	7
MD	nd	nd	nd	52	29	NA	NA	NA	NA	NA
MI	11	9	13	11	5	7	8	7	6	12
MN	0	0	2	10	7	12	13	9	9	4
MO	2	4	5	2	8	NA	NA	NA	NA	NA
NV	0	1	0	1	2	0	0	0	5	6
NM	0	0	1	1	2	0	0	1	4	2
NY	64	45	44	43	78	78	91	95	100	96
NC	2	2	1	1	3	7	3	4	6	4
OH	5	5	5	4	6	9	12	18	4	14
OK	7	6	4	3	1	4	1	1	3	7
PA	41	21	26	28	53	47	79	94	94	64
RI	3	4	4	4	9	4	3	0	1	4
SC	1	5	3	2	2	5	6	7	4	1
UT	0	1	0	0	1	1	1	2	2	1
VA	13	19	15	18	32	19	23	13	4	9
WI	2	5	4	3	4	2	NA	NA	NA	NA
Totals	242	219	207	268	301	259	278	288	276	254

NA = Not Applicable
nd = no data provided

This report was supported by the U.S. Department of Education (Cooperative Agreement No. H326F000001). However, the opinions expressed herein do not necessarily reflect the position of the U.S. Department of Education, and no official endorsement by the Department should be inferred.
Note: There are no copyright restrictions on this document; however, please credit the source and support of federal funds when copying all or part of this material.

IDEAs that Work
U.S. Office of Special Education Programs

This document, along with many other FORUM publications, can be downloaded from the Project FORUM at NASDSE web address:

http://www.nasdse.org/forum.htm

To order a hard copy of this document or any other FORUM publication, please contact Carla Burgman at NASDSE, 1800 Diagonal Road, Suite 320, Alexandria, VA 22314
Ph: 703-519-3800 ext. 312 or Email: carla@nasdse.org

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)

NOTICE

REPRODUCTION BASIS

☐ This document is covered by a signed "Reproduction Release (Blanket) form (on file within the ERIC system), encompassing all or classes of documents from its source organization and, therefore, does not require a "Specific Document" Release form.

☑ This document is Federally-funded, or carries its own permission to reproduce, or is otherwise in the public domain and, therefore, may be reproduced by ERIC without a signed Reproduction Release form (either "Specific Document" or "Blanket").